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August 29, 1994

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M. Street, NW
Washington, DC 20554

Re: In the Matter of Equal Access and
Interconnection Obligations Pertaining
to Commercial Mobile Radio Services -
CC Docket No. 94-54

Dear Secretary Caton:

Enclosed please find an original and eleven copies of
the Comments of the New York State Department of Public Service
in the above-referenced proceeding.

Sincerely,

Penny Rubin
Assistant Counsel

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AUG 29 1994

Before the
Federal Communications Commission FCC MAIL ROOM
Washington, D.C. 20554

In the Matter of)	
Equal Access and Interconnection)	CC Docket No. 94-54
Obligations Pertaining to)	RM-8012
Commercial Mobile Radio Services)	

**Comments of
New York State Department of Public Service**

INTRODUCTION

The New York State Department of Public Service (NYDPS) submits these comments in response to the Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI) released July 1, 1994.

In the NPRM, the Commission tentatively concludes that equal access obligations should be imposed on Commercial Mobile Radio Service (CMRS) providers. Additionally, the Commission seeks comments on whether to require local exchange carriers (LECs) to provide interconnection to CMRS providers under tariff or whether to retain the existing requirement that LECs provide interconnection to CMRS pursuant to good faith contractual negotiations. Finally, the Commission has initiated an inquiry regarding specific issues of interconnection among CMRS providers.

The NYDPS supports the imposition of equal access obligations on all CMRS providers. As explained in our Petition

for Reconsideration¹ regarding the regulatory treatment of mobile services, the current interconnection arrangements between LECs and CMRS providers serve New York ratepayers well and should not be altered, as a result of federal policy changes. Additionally, the Commission should develop rules to require that CMRS providers have the ability to interconnect with each other to provide for a seamless "network of networks." Finally, regarding the preemption of states' authority to establish interconnection requirements, rates, and terms and conditions, any decision to preempt states is premature, unnecessary and unlawful.

I. Equal Access Obligations of CMRS Providers.

The NYDPS concurs with the Commission's tentative conclusion that equal access obligations should be imposed on CMRS providers. Equal access obligations for CMRS providers would benefit wireless subscribers in the same manner that equal access for LECs benefitted landline customers, namely greater choice and potentially lower rates. In addition, equal access obligations for all CMRS providers further levels the competitive playing field between wireline and nonwireline CMRS providers. Currently, a CMRS provider associated with a Bell Operating Company is required to provide equal access to its customers while other CMRS providers are not. The nonwireline CMRS

¹GN Docket No. 93-252, In the Matter of Implementation of Section 3 (n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services. Petition for Reconsideration of the New York State Department of Public Service, dated May 13, 1994. (Petition for Reconsideration.)

provider may negotiate its own arrangements with the various interexchange carriers. These arrangements may not necessarily be in the best interests of the CMRS end user. CMRS providers could continue to negotiate arrangements with the interexchange carriers, but their end users would not be precluded from choosing an interexchange carrier that has not reached any specific agreement with the CMRS provider. In addition, equal access obligations should be established for new CMRS entrants requiring that they provide customers with the ability to select their preferred interexchange carrier.

While there may be costs associated with providing equal access, these costs have already been incurred by the CMRS providers associated with a LEC. Given our experience with landline companies, and our understanding of CMRS provider network capabilities, these costs are not significant. This is unlike the situation in which the LECs were required to provide equal access to their landline customers. Many electro-mechanical and analog electronic central office switches were still in service at that time and could not be adapted to provide equal access easily or inexpensively. Today, most CMRS providers have digital switches equipped with recent versions of generic operating programs. These switches have the inherent capability to provide equal access.

With regard to trunking costs, at this point they appear to be minimal or nonexistent. Interexchange carriers must request equal access from a CMRS office. As with landline equal

access, once an office is equal access capable to satisfy a bona fide request, it is the responsibility of the interexchange carrier and not the CMRS provider to designate sufficient trunk fields to carry traffic. Therefore, no additional costs should be incurred by the CMRS providers, since the trunking would be provided by the interexchange carrier.

The NYDPS does not believe that there is a need for the elaborate and expensive balloting and presubscription process used to facilitate landline equal access. Simple notification to consumers that choice is available to them should suffice.

II. Interconnection Requirements.

New York currently requires LECs to file tariffs for interconnections between themselves and CMRS providers for intrastate services. This arrangement serves to keep interconnection arrangements nondiscriminatory and open to inspection. Additionally, it eases interconnection for new market entrants. Under these tariffs, CMRS providers can choose to be interconnected in a way that best serves their needs, and position themselves in the network to appear as a LEC end user at one extreme or as a peer to the LEC at the other.

As the Commission recognized that cellular service is primarily used to provide "local, intrastate exchange telephone service", (Notice, para 108), so too will the new technologies be used to provide local service, in the near future. Therefore, the current model whereby interconnection arrangements "are

properly the subject of negotiations between the carriers as well as State regulatory jurisdiction" should not be altered (Notice, para 108). In the event that interconnection by wireless carriers is used for the purpose of completing interstate calls, the Commission should move to a policy of requiring tariffs to avoid potential claims of discrimination. However, as it now recognizes, there is no reason that state and federal policies regarding interconnection cannot coexist.

Regarding interconnection arrangements between CMRS providers, the NYDPS generally supports the Commission's efforts to develop rules for the interconnection of CMRS providers. Currently, there are no requirements that CMRS providers be interconnected. For a customer of one CMRS provider to connect to a customer of another CMRS provider, now the connection usually is made through the LEC. Because of the relatively low volume of traffic of this nature, this arrangement probably has been efficient even though each CMRS provider is required to pay access to the LEC. In an environment where most of the CMRS traffic is typically from the CMRS customer to the landline customer, interconnection between CMRS providers is not a critical issue. However, as the number of CMRS providers and services increase and current rates evolve toward lower usage charges, there may be a dramatic increase in the number of calls completed between CMRS providers. Thus, direct interconnection between CMRS providers may become more desirable from both a cost and a service quality standpoint. Currently, when one CMRS

provider is associated with the LEC, there is no incentive for this CMRS provider to interconnect directly with its competitor.

Although it is difficult to predict future demand for such interconnection, this appears to be an opportune point to begin a dialogue on CMRS-to-CMRS interconnection. As general principles, the NYDPS would offer that:

- 1) the states should be left to administer such interconnection arrangements when the traffic involved is intrastate in nature; and
- 2) such interconnection should not be absolutely mandated, but only required if one party to such arrangement presents a bona fide request and can reasonable show that such interconnection would be in the public interest.

III. Preemption of State Authority Over CMRS Interconnection

The Commission asks whether it should preempt states from imposing interconnection obligations on some or all CMRS providers, if the Commission elects not to impose such obligations on CMRS providers.

In the event the Commission decides not to impose interconnection obligations on some or all CMRS providers it should not preempt any state from imposing such obligations. At this point, the states are best suited to monitor the interconnection furnished by CMRS providers to other carriers and other service providers. If local circumstances so warrant, the states should be permitted to impose interconnection obligations to further the objective of universal service and achieve regulatory parity.

Furthermore, the Budget Reconciliation Act (Act) reveals that Congress did not intend to prevent the states from regulating the interconnection among CMRS providers and other carriers and service providers (47 USC 332(c)(1)(B)). Therefore, Section 152(b) of the Communications Act vests the State with this authority (47 USC 152(b)). Finally, as we stated in the Petition for Reconsideration, the authority to set the rates and terms and condition of intrastate CMRS interconnection is reserved to the states.

CONCLUSION

For the foregoing reasons, the NYDPS supports imposing equal access obligations on CMRS providers and supports the Commission's further investigation into the need to required interconnection between CMRS providers. The NYDPS urges the Commission not to preempt State authority to require interconnection should a State decide it is in the public interest.

Respectfully submitted,



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DATED: August 29, 1994
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CC Docket 94-54

In the Matter of
Equal Access and Interconnection
Obligations Pertaining to
Commercial Mobile Radio Services

Comments of New York State
Department of Public Service

CERTIFICATE OF SERVICE

I, Penny Rubin, hereby certify that nine copies of the above-captioned proceeding were sent via Federal Express to Mr. Caton, and by first class United States mail, postage prepaid, to all parties on the attached service list.



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